

FRANKLIN RAMSEY, JR.
Claimant

PEERLESS PRODUCTS, INC.
Respondent

LIBERTY MUTUAL INSURANCE COMPANY
Insurance Carrier

¹ Claimant's Application For Review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Board finds that this matter should be dismissed, as the Board does not have jurisdiction to consider this issue at this time.

Claimant alleges that the ALJ inappropriately weighed the evidence against claimant in finding claimant was not entitled to additional temporary total disability compensation. Claimant argues that the ALJ determined that claimant had presented conflicting testimony and, therefore, did not meet his burden of proof. Claimant acknowledges the conflicting testimony was between respondent's witness, human resources director Lacy Nickelson, and claimant. Claimant went on to argue that denying temporary total disability benefits as a matter of law because there was conflicting testimony at a preliminary hearing exceeds the jurisdiction of the court.

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues, which are deemed jurisdictional.

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide both timely notice and timely written claim of the accidental injury?
4. Is there any defense which goes to the compensability of the claim?²

Additionally, the Board may review those preliminary hearing orders where a judge has exceeded his or her jurisdiction or authority.³

K.S.A. 44-534a specifically grants an administrative law judge the jurisdiction to determine issues dealing with temporary total disability compensation. It is inherent that an administrative law judge analyze the evidence, including the weight which is to be given to each witness who provides in-person or deposition testimony, as well as the weight to be given any documents which may be entered at preliminary hearing. In this instance, the ALJ, in weighing the testimony of claimant and respondent's human resources director,

² K.S.A. 2003 Supp. 44-534a.

³ K.S.A. 44-551.

found claimant to be lacking. The ALJ noted that it is claimant's burden to prove his entitlement to benefits in workers compensation litigation.⁴

The Board finds that the dispute raised by claimant is not one listed under K.S.A. 44-534a as jurisdictional on an appeal from a preliminary hearing. Additionally, the ALJ did not exceed his jurisdiction in determining claimant's entitlement to temporary total disability compensation.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁵

The Board, therefore, finds that it does not have jurisdiction to determine this matter and finds that the appeal by claimant should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Kenneth J. Hursh dated March 2, 2005, remains in full force and effect and the appeal of the claimant in the above matter is hereby dismissed.

IT IS SO ORDERED.

Dated this ____ day of May 2005.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
John R. Emerson, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ K.S.A. 44-501 and K.S.A. 2003 Supp. 44-508(g).

⁵ *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977); *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).